

# HOUSE BILL No. 1206

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-17.4-4-11; IC 31-19; IC 31-30-1-3; IC 33-14-1-7; IC 33-19-6-12; IC 35-36-7-3; IC 35-37; IC 35-46-1-4.5.

**Synopsis:** Child endangerment in a motor vehicle. Provides that a person who leaves a child less than seven years of age unattended or with a child less than 12 years of age in a vehicle for more than ten minutes commits child endangerment in a motor vehicle, a Class A misdemeanor. Increases the penalty if a violation results in bodily injury or for subsequent offenses. Makes conforming changes so that a person convicted of this crime faces the same consequences as a person convicted of neglect of a dependent. Requires a prosecuting attorney to offer a person who has not been previously charged with child endangerment in a motor vehicle and is charged with the offense as a Class A misdemeanor to participate in a court approved pretrial diversion program consisting of parenting classes and counseling.

**Effective:** July 1, 2004.

**Cheney**

January 13, 2004, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1206

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 12-17.4-4-11, AS AMENDED BY P.L.123-2002, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The division shall deny a license when an applicant fails to meet the requirements for a license. The division shall deny a license to an applicant who has been convicted of any of the following felonies:

- (1) Murder (IC 35-42-1-1).
- (2) Causing suicide (IC 35-42-1-2).
- (3) Assisting suicide (IC 35-42-1-2.5).
- (4) Voluntary manslaughter (IC 35-42-1-3).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery (IC 35-42-2-1).
- (7) Aggravated battery (IC 35-42-2-1.5).
- (8) Kidnapping (IC 35-42-3-2).
- (9) Criminal confinement (IC 35-42-3-3).
- (10) A felony sex offense under IC 35-42-4.
- (11) Carjacking (IC 35-42-5-2).



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(12) Arson (IC 35-43-1-1).

(13) Incest (IC 35-46-1-3).

(14) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).

(15) Child selling (IC 35-46-1-4(d)).

(16) A felony involving a weapon under IC 35-47 or IC 35-47.5.

(17) A felony relating to controlled substances under IC 35-48-4.

(18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.

**(19) Child endangerment in a motor vehicle (IC 35-46-1-4.5).**

**(20)** A felony that is substantially equivalent to a felony listed in subdivisions (1) through ~~(18)~~ **(19)** for which the conviction was entered in another state.

The division may deny a license to an applicant who has been convicted of a felony that is not listed in this subsection.

(b) The division shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving a written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The division shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

SECTION 2. IC 31-19-9-10, AS AMENDED BY P.L.222-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. A court shall determine that consent to adoption is not required from a parent if:

(1) the parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) rape (IC 35-42-4-1);

(E) criminal deviate conduct (IC 35-42-4-2);

(F) child molesting as a Class A or Class B felony (IC 35-42-4-3);

(G) incest as a Class B felony (IC 35-46-1-3);

(H) neglect of a dependent as a Class B felony (IC 35-46-1-4);

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- 1 (I) battery of a child as a Class C felony (IC 35-42-2-1(a)(3));  
 2 (J) battery as a Class A felony (IC 35-42-2-1(a)(5)) or Class B  
 3 felony (IC 35-42-2-1(a)(4)); ~~or~~  
 4 **(K) child endangerment in a motor vehicle as a Class D**  
 5 **felony (IC 35-46-1-4.5); or**  
 6 **(L) an attempt under IC 35-41-5-1 to commit an offense**  
 7 **described in clauses (A) through (J); (K);**  
 8 (2) the child or the child's sibling, half-blood sibling, or  
 9 step-sibling of the parent's current marriage is the victim of the  
 10 offense; and  
 11 (3) after notice to the parent and a hearing, the court determines  
 12 that dispensing with the parent's consent to adoption is in the  
 13 child's best interests.
- 14 SECTION 3. IC 31-19-11-1, AS AMENDED BY P.L.123-2002,  
 15 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2004]: Sec. 1. (a) Whenever the court has heard the evidence  
 17 and finds that:
- 18 (1) the adoption requested is in the best interest of the child;
  - 19 (2) the petitioner or petitioners for adoption are of sufficient  
 20 ability to rear the child and furnish suitable support and  
 21 education;
  - 22 (3) the report of the investigation and recommendation under  
 23 IC 31-19-8-5 has been filed;
  - 24 (4) the attorney or agency arranging an adoption has filed with the  
 25 court an affidavit prepared by the state department of health under  
 26 IC 31-19-5-16 indicating whether a man is entitled to notice of the  
 27 adoption because the man has registered with the putative father  
 28 registry in accordance with IC 31-19-5;
  - 29 (5) proper notice arising under subdivision (4), if notice is  
 30 necessary, of the adoption has been given;
  - 31 (6) the attorney or agency has filed with the court an affidavit  
 32 prepared by the state department of health under:
  - 33 (A) IC 31-19-6 indicating whether a record of a paternity  
 34 determination; or
  - 35 (B) IC 16-37-2-2(g) indicating whether a paternity affidavit  
 36 executed under IC 16-37-2-2.1;  
 37 has been filed in relation to the child;
  - 38 (7) proper consent, if consent is necessary, to the adoption has  
 39 been given; and
  - 40 (8) the petitioner for adoption is not prohibited from adopting the  
 41 child as the result of an inappropriate criminal history described  
 42 in subsection (c);

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the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the department's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A conviction of a felony or a misdemeanor related to the health and safety of a child by a petitioner for adoption is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

- (1) Murder (IC 35-42-1-1).
- (2) Causing suicide (IC 35-42-1-2).
- (3) Assisting suicide (IC 35-42-1-2.5).
- (4) Voluntary manslaughter (IC 35-42-1-3).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery as a felony (IC 35-42-2-1).
- (7) Aggravated battery (IC 35-42-2-1.5).
- (8) Kidnapping (IC 35-42-3-2).
- (9) Criminal confinement (IC 35-42-3-3).
- (10) A felony sex offense under IC 35-42-4.
- (11) Carjacking (IC 35-42-5-2).
- (12) Arson (IC 35-43-1-1).
- (13) Incest (IC 35-46-1-3).
- (14) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).
- (15) Child selling (IC 35-46-1-4(d)).
- (16) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- (17) A felony relating to controlled substances under IC 35-48-4.
- (18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (19) **Child endangerment in a motor vehicle (IC 35-46-1-4.5).**
- (20) A felony that is substantially equivalent to a felony listed in subdivisions (1) through ~~(18)~~ (19) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (11), (12), (16), or (17), or its equivalent under subdivision ~~(19)~~, (20), if the offense was not committed within the immediately preceding five (5) year period.

SECTION 4. IC 31-30-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A juvenile court has concurrent original jurisdiction in cases involving adults charged with the crime of:

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- (1) neglect of a dependent (IC 35-46-1-4);
- (2) contributing to delinquency (IC 35-46-1-8);
- (3) violating the compulsory school attendance law (IC 20-8.1-3);
- (4) criminal confinement of a child (IC 35-42-3-3); ~~or~~
- (5) interference with custody (IC 35-42-3-4); **or**
- (6) child endangerment in a motor vehicle (IC 35-46-1-4.5).**

SECTION 5. IC 33-14-1-7, AS AMENDED BY P.L.219-2003, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) After June 30, 2005, this section does not apply to a person who:

- (1) holds a commercial driver's license; and
- (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

(b) A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; and
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

(c) An agreement under subsection (b) may include conditions that the person:

- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-19-5-1;
- (2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;
- (3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;
- (4) support the person's dependents and meet other family responsibilities;
- (5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;
- (6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;
- (7) report to the prosecuting attorney at reasonable times;
- (8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; ~~and~~

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(9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney; **and**

**(10) participate in a court approved pretrial diversion program consisting of parenting classes and counseling.**

(d) An agreement under subsection (b)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(e) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(f) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

(g) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (c)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 6. IC 33-19-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. In each criminal action in which:

(1) a person is found to have committed the offense of:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) reckless homicide (IC 35-42-1-5);

(E) battery (IC 35-42-2-1);

(F) rape (IC 35-42-4-1);

(G) criminal deviate conduct (IC 35-42-4-2);

(H) child molesting (IC 35-42-4-3);

(I) child exploitation (IC 35-42-4-4);

(J) vicarious sexual gratification (IC 35-42-4-5);

(K) child solicitation (IC 35-42-4-6);

(L) incest (IC 35-46-1-3);

(M) neglect of a dependent (IC 35-46-1-4);

(N) child selling (IC 35-46-1-4); ~~or~~

(O) child seduction (IC 35-42-4-7); ~~and or~~

**(P) child endangerment in a motor vehicle (IC 35-46-1-4.5); and**

(2) the victim of the offense is less than eighteen (18) years of age;

the court shall order the person to pay a child abuse prevention fee of one hundred dollars (\$100) to the clerk.

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SECTION 7. IC 35-36-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) This section applies to criminal actions for felonies under IC 35-42, for neglect of a dependent (IC 35-46-1-4), **child endangerment in a motor vehicle (IC 35-46-1-4.5)**, and for attempts of those felonies (IC 35-41-5-1).

(b) If a motion is made to postpone a trial or other court proceeding that involves an offense listed in subsection (a), the court shall consider whether a postponement will have an adverse impact upon a child who is less than ten (10) years of age and who:

- (1) is the alleged victim of an offense listed in subsection (a); or
- (2) will be a witness in the trial.

SECTION 8. IC 35-37-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) This section applies to a criminal action under the following:

- (1) Sex crimes (IC 35-42-4).
- (2) Battery upon a child (IC 35-42-2-1(2)(B)).
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) **Child endangerment in a motor vehicle (IC 35-46-1-4.5).**
- (7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through ~~(5)~~: **(6)**.

(b) As used in this section, "protected person" means:

- (1) a child who is less than fourteen (14) years of age; or
- (2) a mentally disabled individual who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:
  - (A) is manifested before the individual is eighteen (18) years of age;
  - (B) is likely to continue indefinitely;
  - (C) constitutes a substantial impairment of the individual's ability to function normally in society; and
  - (D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(c) A statement or videotape that:

- (1) is made by a person who at the time of trial is a protected person;
  - (2) concerns an act that is a material element of an offense listed in subsection (a) that was allegedly committed against the person;
- and

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(3) is not otherwise admissible in evidence;  
 is admissible in evidence in a criminal action for an offense listed in  
 subsection (a) if the requirements of subsection (d) are met.

(d) A statement or videotape described in subsection (c) is  
 admissible in evidence in a criminal action listed in subsection (a) if,  
 after notice to the defendant of a hearing and of ~~his~~ **the defendant's**  
 right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:

(A) conducted outside the presence of the jury; and

(B) attended by the protected person;

that the time, content, and circumstances of the statement or  
 videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one

(1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or  
 psychologist, and other evidence, if any, the court finds that  
 the protected person's testifying in the physical presence of  
 the defendant will cause the protected person to suffer  
 serious emotional distress such that the protected person  
 cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for  
 medical reasons.

(iii) The court has determined that the protected person is  
 incapable of understanding the nature and obligation of an  
 oath.

(e) If a protected person is unavailable to testify at the trial for a  
 reason listed in subsection (d)(2)(B), a statement or videotape may be  
 admitted in evidence under this section only if the protected person was  
 available for cross-examination:

(1) at the hearing described in subsection (d)(1); or

(2) when the statement or videotape was made.

(f) A statement or videotape may not be admitted in evidence under  
 this section unless the prosecuting attorney informs the defendant and  
 the defendant's attorney at least ten (10) days before the trial of:

(1) ~~his~~ **the prosecuting attorney's** intention to introduce the  
 statement or videotape in evidence; and

(2) the content of the statement or videotape.

(g) If a statement or videotape is admitted in evidence under this  
 section, the court shall instruct the jury that it is for the jury to  
 determine the weight and credit to be given the statement or videotape

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and that, in making that determination, the jury shall consider the following:

- (1) The mental and physical age of the person making the statement or videotape.
- (2) The nature of the statement or videotape.
- (3) The circumstances under which the statement or videotape was made.
- (4) Other relevant factors.

SECTION 9. IC 35-37-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) This section applies to a criminal action under the following:

- (1) Sex crimes (IC 35-42-4).
- (2) Battery upon a child (IC 35-42-2-1(2)(B)).
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) **Child endangerment in a motor vehicle (IC 35-46-1-4.5).**
- (7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through ~~(5)~~ (6).

(b) As used in this section, "protected person" has the meaning set forth in section 6 of this chapter.

(c) On the motion of the prosecuting attorney, the court may order that the testimony of a protected person be taken in a room other than the courtroom, and that the questioning of the protected person by the prosecution and the defense be transmitted using a two-way closed circuit television arrangement that:

- (1) allows the protected person to see the accused and the trier of fact; and
- (2) allows the accused and the trier of fact to see and hear the protected person.

(d) On the motion of the prosecuting attorney or the defendant, the court may order that the testimony of a protected person be videotaped for use at trial. The videotaping of the testimony of a protected person under this subsection must meet the requirements of subsection (c).

(e) The court may not make an order under subsection (c) or (d) unless:

- (1) the testimony to be taken is the testimony of a protected person who:
  - (A) is the alleged victim of an offense listed in subsection (a) for which the defendant is being tried or is a witness in a trial for an offense listed in subsection (a); and
  - (B) is found by the court to be a protected person who should

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be permitted to testify outside the courtroom because:

(i) the court finds from the testimony of a psychiatrist, physician, or psychologist and any other evidence that the protected person's testifying in the physical presence of the defendant would cause the protected person to suffer serious emotional harm and the court finds that the protected person could not reasonably communicate in the physical presence of the defendant to the trier of fact;

(ii) a physician has certified that the protected person cannot be present in the courtroom for medical reasons; or

(iii) evidence has been introduced concerning the effect of the protected person's testifying in the physical presence of the defendant, and the court finds that it is more likely than not that the protected person's testifying in the physical presence of the defendant creates a substantial likelihood of emotional or mental harm to the protected person;

(2) the prosecuting attorney has informed the defendant and the defendant's attorney of the intention to have the protected person testify outside the courtroom; and

(3) the prosecuting attorney informed the defendant and the defendant's attorney under subdivision (2) at least ten (10) days before the trial of the prosecuting attorney's intention to have the protected person testify outside the courtroom.

(f) If the court makes an order under subsection (c), only the following persons may be in the same room as the protected person during the protected person's testimony:

(1) A defense attorney if:

(A) the defendant is represented by the defense attorney; and

(B) the prosecuting attorney is also in the same room.

(2) The prosecuting attorney if:

(A) the defendant is represented by a defense attorney; and

(B) the defense attorney is also in the same room.

(3) Persons necessary to operate the closed circuit television equipment.

(4) Persons whose presence the court finds will contribute to the protected person's well-being.

(5) A court bailiff or court representative.

(g) If the court makes an order under subsection (d), only the following persons may be in the same room as the protected person during the protected person's videotaped testimony:

(1) The judge.

(2) The prosecuting attorney.

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(3) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).

(4) Persons necessary to operate the electronic equipment.

(5) The court reporter.

(6) Persons whose presence the court finds will contribute to the protected person's well-being.

(7) The defendant, who can observe and hear the testimony of the protected person with the protected person being able to observe or hear the defendant. However, if the defendant is not represented by an attorney, the defendant may question the protected person.

(h) If the court makes an order under subsection (c) or (d), only the following persons may question the protected person:

(1) The prosecuting attorney.

(2) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).

(3) The judge.

SECTION 10. IC 35-37-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this chapter, "covered act" means any of the following offenses or an act that, if committed by a person less than eighteen (18) years of age, would be any of the following offenses if committed by an adult:

(1) A sex crime under IC 35-42-4.

(2) A battery against:

(A) a child under IC 35-42-2-1(2)(B);

(B) a disabled person under IC 35-42-2-1(2)(C);

(C) an endangered adult under IC 35-42-2-1(2)(F); or

(D) a spouse under IC 35-42-2-1.

(3) Neglect of a dependent under IC 35-46-1-4.

(4) Incest **under** IC 35-46-1-3.

**(5) Child endangerment in a motor vehicle under IC 35-46-1-4.5.**

SECTION 11. IC 35-46-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 4.5. (a) A person who has the care of a child who is less than seven (7) years of age, whether assumed voluntarily or because of a legal obligation, and who knowingly or intentionally leaves the child:**

**(1) unattended; or**

**(2) only with an individual who is less than twelve (12) years of age;**

**in a motor vehicle for more than ten (10) minutes commits child**

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1       endangerment in a motor vehicle, a Class A misdemeanor.

2       (b) However, an offense under subsection (a) is a Class D felony  
3       if:

4           (1) the person has a prior conviction for violating this section;

5           or

6           (2) the offense results in serious bodily injury.

7       (c) Before the trial of a person being prosecuted under this  
8       section as a Class A misdemeanor, a prosecuting attorney shall  
9       offer the person a pretrial diversion program consisting of court  
10      approved parenting classes and counseling if the person has not  
11      been previously charged with child endangerment in a motor  
12      vehicle.

13      (d) A pretrial diversion program described in subsection (c)  
14      must meet the requirements of IC 33-14-1-7.

15      (e) If a person participates in a pretrial diversion program  
16      described in subsection (c), the person shall sign a statement under  
17      penalties of perjury that the person has not participated in a  
18      pretrial diversion program after being charged with child  
19      endangerment in a motor vehicle in any county.

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